



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

IMPLEMENTATION PLAN FOR THE ADOPTION OF
Chapter 173 - 546 WAC,
Water Resources Management Program,
Entiat River Basin,
Water Resource Inventory Area (WRIA) 46

05-11-019

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This rule has 4 main elements. There are some implementation needs that will be relevant to all of them (primarily outreach and communication), and each element will also have specific requirements. The main elements of the rule are:

1. Setting instream flows.
2. Establishing a reservation of water for future out-of-stream uses and the conditions associated with each use. The reservation is limited to a total of 5 cfs of surface and ground water, to be allocated between 3 categories of use: domestic and stock-watering (1 cfs), commercial agriculture (3 cfs) and commercial and light industrial uses (1 cfs).
3. Setting maximum future allocation amounts for the mainstem Entiat and Mad Rivers.
4. Addressing future permitting actions.

1. **Please describe how the Agency intends to implement and enforce the rule. Please include a description of the resources the Agency intends to use (RCW 34.05.328(3)(a)).**

Implementation consists of education and outreach, technical assistance, permitting, and enforcement. These activities will be accomplished primarily at the regional level. Enforcement under WAC 173-546 will follow the procedures developed for and used in the Okanogan, Methow, and Wenatchee River watersheds (see WAC 173-549, WAC 173-548, and WAC 173-545 respectively).

Water Resources staff are currently developing a program-wide compliance and enforcement strategy addressing instream flows

Instream flows:

- Key implementation component: outreach and communication. Outreach and communication will be done both by Ecology and by the Entiat WRIA Planning Unit (EWPU), emphasizing that flows are set and will not affect existing rights or rights established through the reservation. Rights established outside of the reservation will be subordinate to instream flows as a condition of the water right permit. When the adopted instream flows are projected not to be met in any water year, Ecology will send a letter to each right-holder with a permit or certificate conditioned with the instream flow provision. If flows fall below the instream flow level, orders will be issued to require that water users follow directions available through a toll-free telephone message, and on-the ground verification that use has been curtailed will be done by Ecology staff.
- Processing pending water right applications: applications for water uses that do not qualify for the reservation will either be denied or made subject to the adopted instream flows and maximum allocation limits.
- As described above, if water rights are issued subject to instream flow, and flows are not met, a compliance program similar to those being used in the Okanogan, Wenatchee and

Methow will be instituted in the Entiat River watershed. For more information about these procedures used in the Central Region, please contact Phil Crane by telephone at (509) 454-7647, or by e-mail at pcra461@ecy.wa.gov.

- If over time the existing gauge sites are determined insufficient for monitoring and enforcement purposes, Ecology will coordinate with the EWPU (or its successor) in developing recommendations to move or add to the existing sites; and record such change through collaborative rulemaking, in the same manner as accomplished for this rule.

Implementation of the Reservation:

- Outreach and communication, see #2.
- Ecology has been working with Chelan County and the EWPU developing a process to administer the reservation (see June 30, 2005 Draft "Draft Proposal to Chelan County for Water Tracking Assistance in the Entiat WRIA). This document will continue to be developed throughout year one of Phase 4 (Implementation) under the watershed planning act. The Detailed Implementation Plan, due one year after the initiation of Phase 4, will include a Draft-Final version of this Water Tracking procedure, and undergo a "beta-test" early in 2006. If the procedure is deemed successful by Ecology, EWPU, and County it will be used for further tracking, unless other inadequacies are identified that necessitate change. Change to the procedure will be made with the agreement of Ecology, the EWPU, and Chelan County. If the "beta-test" or other revised procedures are not effective, Ecology, the EWPU and Chelan County will work together to correct the procedure, but will continue to track according to the most current procedure used.
- Ecology intends to use the Notice of Intent or an application for water right as a "gateway" for those prospective water users who want to withdraw ground water or divert surface water and use water from the reservation. A "hard copy" process has been developed, to be used until an automated electronic mechanism is in place, and will continue for the benefit of those who may not have computer access. Consistent with the June 30, 2005 Draft proposal, Ecology will share this information with the EWPU and Chelan County no less than on an annual basis, beginning with a first report by February, 2006.
- Ecology intends to develop a link through the Well Construction website and electronic Notice of Intent function to inform people whether or not they are in the reserve area and whether there is water available in the reserve, and to print out the conditions of use for the reserve. Chelan County is similarly proposing to develop a link through its AS400 system to use a GIS-based function to help determine the relationship of development through the County approval processes to the management of the reserve.
- An electronic accounting system will be created to keep track of what is allocated and what remains, in total and within each use category. WAC 173-546-070(12) states that "the department shall notify both Chelan County and the planning unit or its successor, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent of the reservation is allocated. The department shall also issue a public notice in a newspaper of general circulation for the region at the same three junctures".
- In addition to the annual reserve accounting procedure outlined in the June 30, 2005 draft (to be made draft-final in the EWPU Detailed Implementation Plan), this rule required Ecology and the EWPU to evaluate the effectiveness of this rule, including the reservation

no less than every five years. In the years 2010, 2015, and 2020. The allocated and unallocated amounts for each use will be reviewed, as will the allocated and unallocated amounts for the entire reserve. Modifications to the program may therefore be implemented by rule, if needed.

- Permit staff at the Central Regional Office will use both WAC 173-546 and the Entiat WRIA Management Plan as the rule and frameworks, respectively, for decision-making. For a use to qualify for water under the reservation it must meet the standards in WAC 173-546, as well as efficiencies and standards in the Entiat WRIA Management Plan.
- All uses must be within the stream management units defined by this chapter.
- Commercial agriculture and commercial and light industrial uses – are specifically limited to the Lower Entiat stream management unit, the lower 16.2 river miles of the Entiat River watershed.
- For light industrial uses: Ecology staff will work with the county to more precisely define what uses fall into this category to ensure consistency with land use/zoning. Staff will be informed of the necessity for decisions under this section of the rule to be consistent with Chelan County Code, Ch. 11.04.010 regarding “value added operations”, and will need to work with Chelan County to assure consistency.

Maximum future allocations:

- Implementation will be outreach and communication, see #2.
- An accounting system will need to be created and maintained, to ensure that the maximum allocation amounts are not exceeded. This accounting system will be coordinated with Chelan County and the EWPU (or its successor), consistent with the intent of the June 30, 2005 Draft proposal.
- If the maximum amounts are fully appropriated, the department shall notify the Chelan County and the planning unit (or its successor) in writing, and issue a public notice in the local newspapers (this is written into the rule).
- Policy will be developed, in conjunction with staff at CRO, regarding pending applications.

Funding -- pieces that will need to be in place for all the water resource management rules being developed, including the Entiat:

- to develop and maintain the automated electronic pieces (e.g. link through Well Construction/Notice of Intent and the accounting of the reserve and maximum allocation limits). Initially the processing of Notice of Intent and their “gateway” function can be done manually;
- accounting of permitted uses can be done electronically using WRTS, but a beta-test will need to be done of Ecology/EWPU/Chelan County methods to account for water developed through permit-exempt wells; and

- to assign a staff person to review the Notices of Intent, review permits issued from the reservation, maintain an accounting, of the amounts committed with regard to each use within the reservation, coordinate annually with the County and planning units, and provide notification of the reserve at 50, 75 and 100% allocation levels.

2. Please describe how the Agency intends to inform and educate affected persons about the rule (RCW 34.05.328(3)(b)).

The responsibility for informing and educating the public will be a shared responsibility between Ecology and the planning unit.

We are proposing a series of informational sessions, geared to different affected groups. First, of course, is the general public, especially those who will need water from the reserve in order to develop their property. We will also reach out to well-drillers, realtors and title company representatives, and county employees who issue building permits and subdivision approvals; and to other groups that request information or are identified as needing more.

We have already spoken at two statewide trainings for well-drillers, to inform them about the water resource management rules being developed, including the Entiat. The presentations described the purpose and content of the rules, and specifically addressed the anticipated impact of the reserves on the business of well-drilling. Time for questions was included.

In addition to face-to-face sessions, we will prepare various written materials, such as Question and Answers and Focus sheets. This information will be distributed through our electronic Listserv and through distribution lists provided locally, available in various public places (ex: libraries and county offices), and be on our internet site. One or more press releases/articles will be submitted for publication in the local paper(s). We will also supplement various existing materials, such as the Homeowners Packet which is used by the public for well-drilling information and guidance.

We may designate a staff member as a contact person (perhaps with an 800 number) to answer questions.

3. Please describe how the Agency intends to promote and assist voluntary compliance for this rule (RCW 34.05.328(3)(c)).

Water Resources staff are currently developing a program-wide compliance and enforcement strategy; instream flows, reservations, and other elements of this rule will be part of that strategy.

Outreach and communication will be the key tools here. The rule is very specific about compliance and enforcement (section 120), as consistent with RCW 90.03.605. The first step for promoting voluntary compliance is providing technical assistance. The Water Resources Program is preparing a Q&A on the rule generally, and will develop more specific additional materials as needs are further identified. Water Resources staff will work with the watershed lead and planning unit members providing one or more local informational sessions for the general public and/or specifically affected groups such as the well-drillers. Information on the rule will be on the Ecology website, and will be distributed through a Listserv.

Reserve: Persons who will be using water from the reserve will be informed at a number of junctures of the conditions of use, including the point at which they submit their Notice of Intent to Ecology, and at the county level when they apply for a building permit.

4. Please describe how the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome (RCW 34.05.328(3)(d)).

The purpose of this rule is to retain perennial rivers, streams and lakes in the Entiat River basin with the instream flows and levels necessary to protect and preserve instream resources; to provide reliable and adequate water for certain future out-of stream uses as specified by the EWPU in the Entiat WRIA Management Plan (i.e. reservation); and provide some water for storage or other seasonal out-of-stream use while protecting ecological functions of peak annual runoff (maximum allocation of water).

Evaluation of the efficacy of this rule will be done in collaboration with the EWPU (or its successor), just as it was collaboratively developed with the EWPU. Regular planning unit meetings (currently held quarterly) are the primary forums within which evaluations are made of programs implemented by this rule, or related actions in the Entiat WRIA Management Plan are implemented by Ecology or EWPU members and partners. Monitoring information specific to this rule (e.g. administration of reservation, streamflow gaging) or via other programs (e.g. salmon recovery plan implementation, USGS gaging, USFS watershed and biological monitoring, USFWS biological monitoring) are reported to the EWPU at each meeting. Concerns of Ecology or others about unexpected or undesirable trends in data are addressed first by the EWPU (or its successor), or further developed by a sub-committee and brought back to the planning unit for action.

The EWPU is instituting an adaptive management process whereby at least annually the monitoring information is compiled and reported to the EWPU (or its successor), and the general public through an annual monitoring workshop. Under this adaptive management process, a report will be generated by the Chelan County Conservation District on behalf of the EWPU, compiling all the monitoring information in both hard copy and GIS-based formats.

Key Questions of interest to Ecology regarding this rule:

(A) Instream flows:

- (a) Have the biological conditions been maintained or improved?
 - i. Are there significant changes in adult returns? (redd monitoring)
 - ii. Are there significant changes in smolt to smolt survival? (trap monitoring)
 - iii. Are there significant changes in macro-invertebrate abundance? (ambient)
 - iv. Are there significant changes in macro-invertebrate species composition? (EPT ratio)

- (b) Are flow and maximum allocation-conditioned water uses in compliance with permit conditions?
 - i. Are there any flow-conditioned rights that were in use when flows were not met?
 - ii. Are there any trends in compliance with flow-conditioned water uses?

- (c) Have the hydrologic conditions been maintained or improved?
 - i. Are there significant changes in timing or volume of peak flow?
 - ii. Are there significant changes in the duration of low-flow events (i.e. late summer through winter)?
 - iii. Are there measurable changes in low-flow events associated with flow-enhancement projects?

Instream flow evaluations will be made based on gaging and hydrographic work with partners including USGS, USFS, and Chelan County Conservation District hydrographers and WDFW project monitors. Ecology staff monitoring permits with conditions will compile a record, annually, of compliance with flow and maximum allocation conditions and share this record with the EWPU. Biological evaluations will be made with the EWPU based on myriad biological assessments being conducted by partners including the Upper Columbia Salmon Recovery Unit's Regional Technical Team (RTT), USFS, USFWS, WDFW, Chelan PUD, Yakama Nation and other biologists and scientists working with the EWPU. Record of findings will be shared with the EWPU to include in the annual adaptive management and monitoring report. Ecology will work with the EWPU developing alternative actions to address issues identified during the annual adaptive management process.

(B) Reservation:

The rule includes a provision that the reservation will be evaluated by the department and the planning unit no less than every five years (2010, 2015, 2020), and modifications to the program may be implemented as a result, in rule if needed. Ecology will work with the EWPU compiling and creating a record of uses counted against the reservation and water still available from the reservation. At these times, the accounting assumptions for each use will be reviewed and revised if necessary. The rule includes a provision that permit-exempt ground water uses may be metered if more accurate water use data is needed. Therefore Ecology and the EWPU will consider the need for more accurate information if there is too much uncertainty or disagreement regarding accounting of water related to the reservation.

5. Please describe how the Agency intends to train and inform Ecology staff regarding new rule or rule amendment.

Additional training(s) specific to this rule will be held at CRO for permit writers and well construction staff as needed, since their work will be directly affected by the rule. Information sessions can be scheduled for Water Resources and other agency staff if requested.

6. Identify new supporting documents that need to be developed because of a new rule.

- Q & A(s)
- Focus sheet(s)
- Conditions of use for reserve
- Press releases
- Web updates/information

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